

inspector assigned to make the appeal inspection.

[60 FR 49169, Sept. 21, 1995]

**§ 590.330 When an application for an appeal inspection may be refused.**

When it appears to the official with whom an appeal request is filed that the reasons given in the request are frivolous or not substantial, or that the condition of the product has undergone a material change since the original inspection, or that the original lot has changed in some manner, or the Act or the regulations in this part have not been complied with, the applicant's request for the appeal inspection may be refused. In such case, the applicant shall be promptly notified of the reason(s) for such refusal.

[60 FR 49169, Sept. 21, 1995, as amended at 63 FR 69972, Dec. 17, 1998]

**§ 590.340 Who shall perform the appeal.**

(a) An appeal inspection or review of a decision requested under § 590.310(a) shall be made by the inspector's immediate supervisor or by a licensed inspector assigned by the immediate supervisor other than the inspector whose inspection or decision is being appealed.

(b) The assignment of the inspector(s) who will make the appeal inspection under § 590.310(b) shall be made by the Regional Director or the Chief of the Grading Branch, Poultry Division, Agricultural Marketing Service.

**§ 590.350 Procedures for selecting appeal samples.**

(a) *Prohibition on movement of product.* Products shall not have been moved from the place where the inspection being appealed was performed and must have been maintained under adequate refrigeration when applicable.

(b) *Laboratory analyses.* The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. When the original sample containers cannot be located, the appeal sample shall consist of product taken at random from double the number of original sample containers.

(c) *Condition inspection.* The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. A condition appeal cannot be made unless all originally sampled containers are available.

[36 FR 9814, May 28, 1971. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 60 FR 49169, Sept. 21, 1995]

**§ 590.360 Appeal inspection certificates.**

Immediately after an appeal inspection is completed, an appeal certificate shall be issued to show that the original inspection was sustained or was not sustained. Such certificate shall supersede any previously issued certificate for the product involved and shall clearly identify the number and date of the superseded certificate. The issuance of the appeal certificate may be withheld until any previously issued certificate and all copies have been returned when such action is deemed necessary to protect the interest of the Government. When the appeal inspector assigns a different class to the lot or determines that a net weight shortage exists, the lot shall be retained pending correction of the labeling or approval of the product disposition by the National Supervisor.

[36 FR 9814, May 28, 1971. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 60 FR 49169, Sept. 21, 1995]

**§ 590.370 Cost of appeals.**

(a) There shall be no cost to the appellant when the appeal inspection discloses a material error was made in the original determination.

(b) The costs of an appeal shall be borne by the appellant at an hourly rate of \$27.36, including travel time and expenses if the appeal was frivolous, including but not being limited to the following: The appeal inspection discloses that no material error was made in the original inspection, the condition of the product has undergone a material change since the original inspection, the original lot has changed in some manner, or the Act or these

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regulations have not been complied with.

[36 FR 9814, May 28, 1971. Redesignated at 42 FR 32514, June 27, 1977, as amended at 46 FR 49571, Oct. 7, 1981. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 58 FR 57539, Oct. 26, 1993; 59 FR 52636, Oct. 18, 1994]

### CERTIFICATES

#### **§ 590.400 Form of certificates.**

All certificates shall be issued on forms approved by the Administrator.

#### **§ 590.402 Egg products inspection certificates.**

(a) Upon request of the applicant or the Service, any inspector is authorized to issue an egg products inspection certificate with respect to any lot of egg products inspected by him. In addition, an inspector is authorized to issue an inspection certificate covering product inspected in whole or in part by another inspector when the inspector has knowledge that the product is eligible for certification based on personal examination of the product or official inspection records.

(b) Each egg products inspection certificate shall show the name and address of the processor, the class and quantity of the egg products covered by such certificate, such shipping marks as are necessary to identify such products, all pertinent information concerning the wholesomeness thereof, and such other information as the Administrator may prescribe or approve.

#### **§ 590.404 Erasures or alterations made on official certificates.**

Erasures or alterations shall be initialed by the issuing inspector on the original certificate and any copy thereof. All certificates made useless through clerical error or otherwise and all certificates canceled for whatever cause shall be voided and initialed and the original and all other copies shall be forwarded as prescribed by the Administrator.

#### **§ 590.406 Disposition of official certificates.**

The original and up to two copies of each official certificate shall be issued to the applicant or person designated by him. Other copies shall be filed and

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retained in accordance with the disposition schedule for inspection program records.

### IDENTIFYING AND MARKING PRODUCT

#### **§ 590.410 Shell eggs and egg products required to be labeled.**

(a) All shell eggs packed into containers destined for the ultimate consumer shall be labeled to indicate that refrigeration is required, e.g., "Keep Refrigerated," or words of similar meaning.

(b) Containers and portable tanks of edible egg products, prior to leaving the official plant, shall be labeled in accordance with §§ 590.411 through 590.415 and shall bear the official identification shown in Figure 2 of § 590.412 or Figure 3 or 4 of § 590.415. Bulk transport shipments of liquid pasteurized egg products to nonofficial outlets need not be sealed. Bulk shipments of liquid egg products transported from one official plant to another shall be sealed and accompanied by an official certificate.

[40 FR 20058, May 8, 1975. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 63 FR 45675, Aug. 27, 1998]

#### **§ 590.411 Requirement of formulas and approval of labels for use in official egg products plants.**

(a) No label, container, or packaging material which bears official identification may bear any statement that is false or misleading. Any label, container, or packaging material which bears any official identification shall be used only in such manner as the Administrator may prescribe. No label, container, or packaging material bearing official identification may be used unless it is approved by the Administrator in accordance with paragraph (b) of this section. The use of finished labels must be approved as prescribed by the Administrator. If the label is printed on or otherwise applied directly to the container or packaging material, the principal display panel thereof shall be considered as the label.

(b) No label, container, or packaging material bearing official identification may be printed or prepared for use until the printers' or other final proof